UNITED STATES COURT OF APPEALS
District of Columbia Circuit

James G. Mahorner, an individual and a member of the governed class, P.O. Box 50555 Jacksonville Beach, FL 3240 [sic]-0555, 904-249-0851

Plaintiff/Appellant,

vs.

George W. Bush, Jr., as President of the United States of America, and individually, 1600 Pennsylvania Ave. Washington, D.C. and **PAUL H. O'NEILL**, as Secretary of the Treasury of the United States of America, and individually,

Defendants/Appellees. /

September Term, 2002
District No. 1:02CV01530

Appeals Court File No. 02-5335

RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY AFFIRMANCE

Appellant, **JAMES G. MAHORNER**, *pro se,* respectfully responds to Appellee's Motion for Summary Affirmance and states:

1. Appellees' statement that Appellant seeks solely injunctive relief against the President unconstitutionally initiating war overlooks the right of the judiciary to interpret the Constitution and declare whether such action on the part of the President is unconstitutional and

omitting any injunction against it. Such declaration would be a substantial force in protecting the governed class from the great danger of nuclear or biological attack. Furthermore, the U.S. Supreme Court, in a case involving President Andrew Jackson, issued an order requiring Presidential action even though it was anticipated that the President would ignore the order. The judiciary are appointed for life so that they can comfortably protect the weak from the powerful without fear of retribution. There may have been a failure in this purpose when U.S. citizens who were Japanese and non-Japanese of slant eyes were placed in non-air conditioned concentration camps in the middle of the desert without fault. Certainly the intended mission of the judiciary, as recognized by life appointment, is better served if the court determines whether the power to initiate war in foreign countries lies solely in Congress and is undelegable. The fact that the governing class has so heavily pursued its own safety to the exclusion of the governed verifies that substantial danger has been created by the numerous actions of past and present Presidents in unilaterally initiating war. The action of Thomas Jefferson in refusing to initiate the War of 1812 and awaiting a declaration by Congress for many months while Britain continued to kidnap our seamen from our ships, demonstrates that those Presidents who remember the intent of the U.S. Constitution best, knew and practiced its intended limitations.

2. The pending irreparable harm is conclusively shown by the governing class spending billions of dollars of tax monies to finance the most sophisticated multiple shelters exclusively for the protection of the governing class, a fact known by the judiciary, as well as the top members of the other branches of government. Such fact is

easily proven through answers to interrogatories or by judicial notice.

3. It is arguably clear that should a client, who had publicly pushed the President down, or threatened him with such physical attack because of fear that the President's unilateral action in bombing the nuclear-biological power communist China (embassy), as a public demonstration to prevent the continuation of such action would be entitled to an instruction from the criminal court that the President's action was unconstitutional because the forefathers stated that the blood of the *populous* was not to be spilled by the whim of one, as permitted in England, but must be done by the judgment of the many Congressional representatives, and should the jury find that the unconstitutional action created a threat to the client's life, the jury must acquit. Clearly, under this hypothetical circumstance, the present issue is absolutely justiciable. Non-justiciable issues are those which are always non-justiciable, and clearly those threatened with grave injury do not have to wait the injury to present the issue to the court, any more than those threatened by future cancer because of present environmental factors have to wait for the occurrence of the cancer.

4. The claim of Appellee is not applicable to people in general but only applicable to the governed class who are to be excluded from the three very large fall-out shelters exclusively for the three branches of government, and which in numerous times of dangers past, have been used for the safety of members of the governing class and their cousins and other family members.

5. Appellant has a personal standing to prevent government action which has a possibility of establishing

one religion over another. Both The Vatican and Israel are sovereign theocracies. Both governments direct factors in this country which promote their religion at the expense of others. Thus, Catholics push for conversion before a U.S. Protestant marries a Catholic, and for agreement that the mutual children will be Catholic. Similarly, Israel automatically grants citizenship to those U.S. Protestants who convert to Judiasm. The First Amendment of the U.S. Constitution prohibits Congress enacting laws (appropriations) which tend to establish a particular religion or abridge the free exercise thereof, which dual prohibitions are equally breached by the appropriation to Israel.

6. Appellant has comparable standing to attack the financing of Judiasm by the federal government as has been given to the practitioners of Judiasm in this country who, under similar circumstances, attacked the financing of school prayer and the financing of religious icons by the federal government, and as they would have in attacking the financing of the Vatican (a judiarchy) contemporaneous with the termination of federal financing of Israel (a judiarchy).

7. Appellant cannot support the request for summary affirmance by Mr. Bush without suffering a possibility that such would block an opportunity for review, however, it is possible that the granting of the government request may hasten review, reduce expenses and work of both parties, and save lives by expediting resolution before the imminent threaten of harm occurs.

8. Attached hereto are copies of excerpts from the Harper and Rowe publication *The Genius of the People* by Charles L. Mee, Jr. Such was written in 1817 in such proximity to the enactment of the U.S. Constitution as to

give it great authority as to the original intent. Such specifically says on page 259: "The delegates could scarcely conceive where the power to commit the blood and treasure of the nation to war could be lodged except among the direct representatives of the people and of the states." UNDERSIGNED, SIMILAR TO THE DELEGATES, CAN SCARCELY CONCEIVE THAT HE, AS A NON-GOVERNMENT OFFICIAL, HAS NO STANDING TO SUPPORT THE CONSTITUTIONAL AMENDMENT ENACTED TO PROTECT HIM AND HIS LIFE FROM THE POWER OF GOVERNMENT. IT IS EQUALLY CLEAR THAT HIS POWER TO ENFORCE PEACEABLY THROUGH THE JUDICIARY RENDERS THE ISSUE JUSTICIABLE, AS OTHERWISE IT CAN ONLY BE ENFORCED BY THE POWER OF SELF DEFENSE, AS IS ACKNOWLEDGED IN *THE FEDERALISTS* (28). Of the sole power to initiate war, with no power to delegate such function, the major purpose of the Congressional power is to prevent the shredding [sic] of blood of the powerless by the action of one powerful individual. Appellant and others of the governed class are the only people that have standing to present this issue, as it has already been held that a portion of Congress does not have standing. In the last ten years, many more non-combatant citizens of this country have been killed by hatred from foreign groups whose countries have been attacked solely as a result of the whim of the U.S. President than military combatants who are paid to endanger their lives. The judiciary is the only branch of government which enjoys lifetime appointments, the major purpose being to protect the powerless from unconstitutional exercises of power by the governing class. In full a holding that the sole group intended to be protected by a Constitutional provision has

no standing to request such protection is neither countenanced by fair play principles of justice or logic.

Dated this 18th of December, 2002.

/s/ _____

James G. Mahorner, *Pro Se*
P.O Box 50555
Jacksonville Beach, FL 32240
(904) 249-0851 voice and fax

[The "Genius of the People" attached as an exhibit is reproduced at pages F1 to F4.]